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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,076	04/18/2001	David D. Hadden	1004-001	8830

7590 03/24/2005

Mr. Gene Pease, CEO  
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1812 Chapel Hill Drive  
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EXAMINER
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COLON, CATHERINE M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/837,076

**Applicant(s)**

HADDEN ET AL.

**Examiner**

C. Michelle Colon

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-9,11,14-19,21 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-9,11,14-19,21 and 24-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>2/10/05</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                 |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 24, 2005 has been entered.

Claims 2, 3, 10, 12, 13, 20, 22, 23 and 30 have been previously cancelled.

Claims 1, 4-9, 11, 14-19, 21 and 24-29 are now pending.

***Response to Amendment***

2. Applicant's amendments to claims 1, 11 and 21 are acknowledged.

The amendment to claim 1 is sufficient to overcome the 35 U.S.C. 101 technological arts rejection set forth in the previous Office Action since, based on the Interview held with the attorney, it is understood that the amendment in the preamble is intended to indicate that all of the steps in the body are performed by a computer.

***Response to Arguments***

3. No arguments have been set forth by Applicant in the current RCE.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4-9, 11, 14-19, 21 and 24-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Nashner (U.S. 6,190,287).

As per claim 1, Nashner discloses a method comprising steps performed by a computer including:

a) defining a role associated with a defined performance and a required skill having a required skill level, the defined performance quantifiable as an actual performance metric (col. 4, lines 46-63; col. 7, lines 1-11; The system defines a role for an individual that includes expected performance in terms of quality and quantity of executed tasks. The defined role has required skills to perform certain tasks. The performance metric is measured in terms of quality and quantity of executed tasks.); and

b) associating an individual with the role, the individual having a possessed skill correlating with the required skill of the role and an actual skill level quantifying the possessed skill, wherein the actual performance metric is independent of the quantified actual skill level of the individual (col. 4, lines 46-63; The system determines a current

possessed skill level of an individual. The system defines tasks related to an expected performance, which is distinct from the current skill level of the individual.).

c) quantifying a first actual performance metric for the defined performance of the individual before an event occurrence potentially increasing the actual skill level for the possessed skill of the individual (col. 4, lines 24-27 and 48-55; Figure 1; The system records at least one performance metric of an individual prior to the training program (i.e., event occurrence). The system monitors progress towards performance goals (determining whether or not the training (i.e., event occurrence) affects the skill of the individual in such a way as to improve the performance of the individual carrying out the task.);

d) quantifying a second actual performance metric for the defined performance of the individual after the event occurrence (col. 4, lines 58-61; col. 5, lines 11-15; Figure 1; The system measures multiple performance metrics of an individual before and after training. The system takes performance metrics prior to and after training in order to determine training effectiveness and to monitor compliance with program goals. Thus, a determination of training effectiveness cannot be made without a comparison between a performance metric of an individual prior to training and a performance metric of an individual after training.);

e) analyzing a relationship between the first and second actual performance metrics and the actual skill level of the individual before and after the event occurrence (col. 5, lines 51-67; Table 1; The system takes performance metrics prior to and after training in order to determine training effectiveness and to monitor compliance with

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program goals. Thus, a determination of training effectiveness cannot be made without a comparison between a performance metric of an individual prior to training and a performance metric of an individual after training.); and

f) determining whether the event occurrence increased the defined performance of the individual based at least partially on the relationship between the first and second actual performance metrics and the actual skill level of the individual before the event occurrence (col. 4, lines 58-61; col. 5, lines 15-19 and lines 41-44; Figure 1; The system compares first and second performance metrics of an individual to determine a result of the training on the ability of the individual to perform (quantity and quality) certain tasks.).

As per claim 4, Nashner discloses the method of claim 1 further comprising:

a) analyzing a difference between the required skill level for the role and the actual skill level of the individual (col. 7, lines 2-6; The system performs an initial evaluation of the individual's deficit from the "norm," or required skill level.);

b) determining if training is necessary to raise the actual skill level to the required skill level (col. 7, lines 6-8).

As per claim 5, Nashner discloses the method of claim 1 wherein the defining step further comprises associating a desired performance metric for the defined performance associated with the role and further comprising associating the individual having an actual performance metric correlating with the desired performance metric of the role to the role (col. 7, lines 2-6; Nashner discloses evaluating the individual's performance capabilities relative to the performance goals based on the "norm.").

As per claim 6, Nashner discloses the method of claim 1 further comprising:  
comparing the actual skill level of the individual before and after the event occurrence (col. 4, lines 46-63; col. 7, lines 9-10; The system measures current skill levels and then monitors performance to determine a change in the skill levels.); and  
correlating any difference between the actual skill level of the individual before and after the event occurrence with the ability of the individual to carry out the defined performance (col. 7, lines 11-12; Table 2).

As per claim 7, Nashner discloses the method of claim 1 further comprising:  
comparing the actual skill level of the individual before and after the event occurrence with the first and second actual performance metrics (col. 7, lines 2-11); and  
determining a result of changes in the actual skill level of the individual before and after the event occurrence on the ability of the individual to carry out the defined performance (col. 7, line 27-col. 8, line 11).

As per claim 8, Nashner discloses the method of claim 1 wherein the event occurrence is a training event bearing on the actual skill level of the individual and further comprising:

quantifying a first actual performance metric for the defined performance of a second individual associated with the role before the training event (col. 6, line 63-col. 7, line 1; col. 8, lines 62-67; The invention as disclosed by Nashner compares the individual being evaluated with a reference population "norm." In doing so, the invention is associating a group of individuals with certain skills required for certain roles and is further quantifying such characteristics.);

quantifying a second actual performance metric for the defined performance of the second individual after the training event, wherein the second individual is not subjected to the training event (col. 6, line 63-col. 7, line 1; col. 8, lines 62-67; The invention as disclosed by Nashner compares the individual being evaluated with a reference population "norm." In doing so, the invention is associating a group of individuals with certain skills required for certain roles and is further quantifying such characteristics. Furthermore, the group of individuals are not subjected to the training.); and

comparing the first and second actual performance metrics of the second individual with the first and second actual performance metrics of the individual to determine effectiveness of the training event on the actual skill level (col. 4, lines 21-30 and 46-63; col. 7, lines 2-11; The system uses comparisons between first and second performance metrics to monitor training effectiveness.).

As per claim 9, Nashner discloses the method of claim 8 further comprising:

identifying an increase between the first and second actual performance metrics of the individual and the second individual (col. 7, lines 37-41; Table 2; The system measures training effectiveness, where training is considered effective if there is an increase/improvement between the first and second performance metrics and training is considered ineffective if there is either no increase/improvement or even a decrease between the first and second performance metrics.); and

indicating an influence other than the training event causing the increase between the first and second actual performance metrics of the individual and the



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second individual (col. 6, lines 63-67; col. 7, line 10-col. 8, line 5; Tables 1 and 2; The system also evaluates an individuals' motivation in determining a difference between first and second performance metrics.).

Claims 11, 14-19, 21 and 24-29 recite substantially similar limitations as claims 1 and 4-9 above. Therefore, claims 11, 14-19, 21 and 24-29 are rejected on the same basis as claims 1 and 4-9 above.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- "Knowledge Products Division Supports Company-wide Roll-out" January 92, 2001 [retrieved from Internet], discusses the training and online skills assessment of Global Knowledge's products;
- Nashner (U.S. 6,632,158) discusses monitoring training programs;
- L'Allier et al. (U.S. 6,606,480) discusses creating an individualized learning program;
- "Global Knowledge Fixes Training Costs, Guarantees Learning Results for Italian Credit Management Firm," *PR Newswire*, March 16, 1998 [retrieved from Proquest], discusses training and online skills assessment offered by Global Knowledge's products;

- "Global Knowledge Network to Provide Deutsche Telekom Customers and Employees with Competency-based SAP Training," *PR Newswire*, November 24, 1998 [retrieved from Proquest], discusses training and online skills assessment offered by Global Knowledge's products; and
- "Cellular Phone Company Selects IT Educator's Competus Framework to Design and Deliver Comprehensive Training Program on Office Applications," *PR Newswire*, 1999 [retrieved from Proquest], discusses training and online skills assessment offered by Global Knowledge's products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae (formerly, C. Michelle Colon) whose telephone number is 703-605-4251. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

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703-872-9306 [Official Communications; including After Final  
communications labeled "Box AF"]

703-746-7202 [For status inquiries, draft communication, labeled  
"Proposed" or "Draft"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA 7<sup>th</sup> floor receptionist.

  
cmc

March 18, 2005

  
**SUSANNA M. DIAZ**  
**PRIMARY EXAMINER**  
Au 3623